

REMARKS/ARGUMENTS

Claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219, 241-262 and 264 are pending. By this Amendment, claims 158, 161, 166, 169, 172, 181, 186, 188, 191, 192, 203, 206, 208, 212, 213, 220-240 and 263 are cancelled, claims 159, 163, 168, 179, 183, 187, 199, 201 and 207 are amended, and new claim 264 is presented. Support for the amendments to claims 158, 163, 168, 179, 183, 187, 199, 201 and 207 and new claim 264 can be found, for example, in the present specification at paragraph [0041], [0069] to [0072], and in original claim 158, 163, 168, 179, 183, 187, 199, 201 and 207. No new matter is added. In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

Allowable Subject Matter

Applicant thanks the Examiner for the indication in the Office Action that claims 241-262 are allowed.

Rejection Under 35 U.S.C. §103

The Office Action rejects claims 157-240 under 35 U.S.C. §103(a) over SE 9903818 to Ebeling ("Ebeling")* in view of U.S. Patent No. 6,017,373 to Frisch et al. ("Frisch") and Donnely, W., "Firewood For Your Fireplace" ("Donnely"). By this Amendment, claims 157, 158, 161, 166, 169, 172, 181, 186, 188, 191, 192, 203, 206, 208, 212, 213, 220-239 and 263 are cancelled, rendering the rejection moot as to those claims. As to the remaining claims, Applicant respectfully traverses the rejection.

Claim 159 recites "[a] candle or candle apparatus, comprising: a body of a meltable

* Discussion of Ebeling is made with reference to the English-language translation prepared by the Patent Office.

fuel; and a rigid, planar wick provided in the body; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; and the wick comprises a wood selected from the group consisting of poplar and cherry" (emphasis added). Claim 179 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body; wherein ... the wick comprises a wood having substantially straight grains aligned substantially in the height dimension; and the wood has a moisture content of from 6 to 8 percent" (emphasis added). Claim 199 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body ... wherein ... the thickness dimension of the wick is from 0.023 to 0.028 inches" (emphasis added). Ebeling, Frisch and Donnelly do not disclose or suggest such candles or candle apparatus.

It is undisputed that no single reference discloses a candle having each of the characteristics recited in claims 159, 179 and 199. The Office Action relies on Ebeling for its alleged disclosure of a candle including a body of meltable fuel and a thin flat elongate wood or wood product wick disposed in the body. *See, e.g.*, Office Action, page 4. Ebeling does, indeed, disclose an outdoor candle including a wick made of wooden material impregnated with a combustible material. *See Ebeling*, pages 4 to 5. The Office Action does not identify or cite a single reference that discloses a candle wick: (i) made from poplar or cherry; (ii) made from a wood having straight, vertical grains and a moisture content of from 6 to 8 percent; or having a thickness of from 0.023 to 0.028 inches. However, the Office Action asserts that that the parameters recited in claims 159, 179 and 199 are either generally known or taught by the secondary references, and that selecting the values recited in the claims from among those parameters constitutes a mere design choice. *See, e.g.*, Office Action, pages 10 to 13. In particular, the Office Action asserts:

Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

See Office Action, pages 5 to 6.

Applicant submits that the Office Action fails to make a *prima facie* case of obviousness for at least the reasons discussed in the Amendment filed July 17, 2007. However, even if a *prima facie* case were made, such case is rebutted by the results shown in the Declaration Under 37 C.F.R. §1.132 filed herewith (the "Declaration") – "[a] *prima facie* case of obviousness ... is rebuttable by proof that the claimed compounds possess unexpectedly advantageous or superior properties." See MPEP §2144.09 (citing *In re Papesch*, 315 F.2d 381 (C.C.P.A. 1963)). The Declaration demonstrates that candles including wicks satisfying the parameters recited in claims 159, 179 and 199 provide superior burning properties (flame, acoustic properties) relative to candles including wicks that do not satisfy such parameters. See Declaration, paragraph 7. These results are objective evidence of the improvements of the candles or candle apparatus of claims 159, 179 and 199 over known candles as in Ebeling, and thus these results rebut any suggestion that it would have been obvious to modify the candles of Ebeling in view of the teachings of Frisch and Donnelly. See Declaration, paragraph 7.

For the foregoing reasons, claims 159, 179 and 199 would not have been rendered obvious by Ebeling, Frisch and Donnelly. Claims 160, 162-165, 167, 168, 170, 171, 173-178, 180, 182-185, 187, 189, 190, 193-198, 200-202, 204, 205, 207, 209-211, 214-219 and 241-262 depend variously from claims 159, 179 and 199 and, thus, also would not have been

rendered obvious by Ebeling, Frisch and Donnelly. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

New Claim

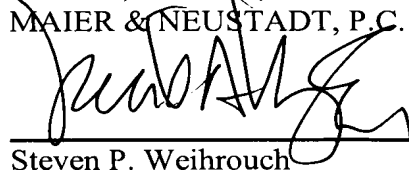
By this Amendment, new claim 264 is presented. New claim 264 is allowable for at least the reasons discussed above with respect to claims 159, 179 and 199.

Conclusion

For the foregoing reasons, Applicant submits that claims 159, 160, 162-165, 167, 168, 170, 171, 173-180, 182-185, 187, 189, 190, 193-202, 204, 205, 207, 209-211, 214-219, 241-262 and 264 are in condition for allowance. Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

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Attachment:
Declaration Under 37 C.F.R. §1.132